



Paper No. 8

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OFFICE OF PETITIONS

In re Application of  
Sato, et al.  
Application No. 09/581,468  
Filed: June 12, 2000  
Attorney Docket No. 1111.64360

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: DECISION ON PETITION  
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This is a decision on the "Petition to Reinstate Proceedings and Grant Filing Date Pursuant to 37 C.F.R. §1.181(f), Petition to Withdraw and Reissue Notice, Resetting Response Time, Pursuant to 37 C.F.R. §1.182, and Petition for Suspension of Rules Pursuant to 37 C.F.R. §1.183," filed July 5, 2001. This petition is properly considered as a petition under §1.53(e)(2).<sup>1</sup>

Application papers in the above-identified application were filed on June 12, 2000. However, on April 3, 2001, the Initial Patent Examination Division (IPED) mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the application was deposited without a complete specification as prescribed by 35 U.S.C. 112 and without drawings as required by 35 U.S.C. 113. In addition, the statutory basic filing fee and an executed oath or declaration in compliance with 1.63 were missing. This Notice set a **TWO MONTH** period for reply to avoid termination of proceedings on the application.

On July 5, 2001, applicants filed the instant petition, with a copy of the application as applicants maintain it was filed. Also included with the petition was a request to, and arguments for, not dismissing the petition as untimely filed. Having considered the arguments on petition and the circumstances of the delay, it is preliminarily concluded that the Commissioner's discretion with respect to dismissing this petition filed three

<sup>1</sup> 1.53(e) Failure to meet filing date requirements.

(1) If an application deposited under paragraph (b), (c), or (d) of this section does not meet the requirements of such paragraph to be entitled to a filing date, applicant will be so notified, if a correspondence address has been provided, and given a time period within which to correct the filing error.

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(h). In the absence of a timely (§ 1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

months after the action complained of will be exercised in favor of the applicants. The petition will be considered on the merits.

On petition, applicants maintain that the application as filed on June 12, 2000, included 67 pages of specification, claims and an abstract and 25 sheets of formal drawings. A review of the Official record of the application as filed, the Official file, reveals that 67 pages of specification, claims and an abstract, as well as, 25 sheets of formal drawings were present in the application on filing. These papers are present in the application file and bear a PCT/PTO rec'd stamp of 12 June 2000. It is further noted that applicants' evidence, though unnecessary to a decision, is persuasive<sup>2</sup>. Applicant has shown that the application as filed on June 12, 2000 included a complete specification with at least one claim and drawings, and thus, is entitled to a filing date of June 12, 2000.

In view thereof, the petition is GRANTED. Giving the basis for granting the petition, the petition fees submitted (\$390) have been refunded to Deposit Account No. 07-2069, as authorized.

The "Notice of Incomplete Nonprovisional Application" mailed April 3, 2001 was mailed in error, and to the extent that it states that the subject application is not entitled to a filing date, it is hereby VACATED.

However, it is noted that the requirement set forth therein to supply an executed declaration and pay the filing fee (and late surcharge) was proper. Receipt of these responses filed July 5, 2001, is acknowledged. To make these responses timely, the fee for an extension for response within the first month (\$110) has been charged to Deposit Account No. 07-2069, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of June 12, 2000, using the application papers received in the Office on that date (including 67 pp. Spec., claims and an abstract, and 25 sheets of drawings); and
- processing of the executed declaration filed July 5, 2001.

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

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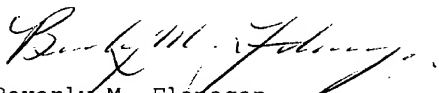
<sup>2</sup>In support thereof, petitioner submitted *inter alia* a copy of their postcard receipt identifying this application by serial number, itemizing "... Patent application including 67 pages of spec. And claims and an abstract; .... 25 sheets of formal drawings ..." among the enclosures, bearing a United States Patent and Trademark Office receipt date-stamp of June 12, 2000, and lacking any notation of non-receipt of any item listed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

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Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.



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